

# **CORE NATURAL GAS SALES AND AGGREGATION AGREEMENT**

**By and Between**

**ABAG POWER**

**and**

---

(Name of Public Agency)

For service within the territory of  
Pacific Gas & Electric Company

## CORE NATURAL GAS SALES AND AGGREGATION AGREEMENT

This Core Natural Gas Sales and Aggregation Agreement, hereinafter "Agreement", is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 199\_\_, by and between the ABAG Publicly OWned Energy Resources, a California joint powers agency, hereinafter "ABAG POWER", and the \_\_\_\_\_ (name of public agency), a \_\_\_\_\_ (charter/general law city or county or special district), hereinafter "Public Agency".

The parties hereby agree as follows:

1. Eligibility: Public Agency is a member of ABAG POWER. ABAG POWER shall provide directly or, at its option, shall contract to provide coordination services for the purchase and management of a natural gas program for members of ABAG POWER participating in said program [Participant(s)].
2. Authorities: Public Agency is a customer of an entity providing natural gas services, hereinafter "Utility", under the jurisdiction of the California Public Utilities Commission, hereinafter "CPUC". Public Agency appoints ABAG POWER as its exclusive agent to coordinate its participation in the Utility's Natural Gas Aggregation Program for core transport customers, hereinafter "Program", on behalf of Public Agency for the facilities listed in Exhibit A, which is attached hereto and incorporated herein. All parties understand and agree that the authority for the Program is granted by and subject to the CPUC, as initially authorized by CPUC Decision No. 91-02-040 and modified through CPUC Decision No. 94-04-027 and Decision No. 95-07-048. This Agreement is pursuant to the Utility Aggregation Tariff Rate Schedule(s), Tariff Rules and terms and conditions set forth in such agreement. Public Agency represents and warrants that any prior aggregator authorizations which Public Agency may have executed will be terminated effective no later than the date of this authorization.
3. Services: ABAG POWER shall deliver, or cause to be delivered, the following services to Public Agency:
  - 3.1 Analyze and evaluate natural gas supply and transportation strategies;
  - 3.2 Negotiate and implement natural gas purchase, transportation and other similar gas services for Participants;
  - 3.3 Forecast estimated monthly gas requirements of Public Agency;
  - 3.4 Negotiate prices and quantities for natural gas purchases by Public Agency which may include a bid or request for proposal process;
  - 3.5 Perform nominations of gas purchased and transportation services for Public Agency;
  - 3.6 Monitor gas account imbalances with transporters;

3.7 Provide for the delivery of natural gas to Participants' facilities as listed in Exhibit A and for storage as permitted by the Utility.

3.8 Generate gas purchase, transportation and storage invoices showing:

3.8.1 For each facility listed in Exhibit A, the meter cycle, monthly usage, and gas charges, which include utility transportation charges, operational fees, ABAG POWER administrative fees and any utility charges.

3.8.2 The status of the account identifying the prior account balance, any payments since the previous invoice, current charges plus any applicable late payment charges and credit balances as calculated pursuant to Paragraph 9.3; and

3.9 Provide general consultation services.

4. Enrollment Notification of Changes: Public Agency shall through the attached Exhibit A submit to ABAG POWER its list of accounts to be served hereunder. Public Agency represents and warrants that all facilities listed in Exhibit A distribute natural gas used by Public Agency and that none of the facilities will be serviced by another core transport agent as of the Start Date as defined in Paragraph 9.5. Public Agency shall also notify ABAG POWER of changes in Public Agency's facilities or operations which are reasonably expected to increase or decrease the consumption of natural gas more than ten percent (10%) as compared to historical levels. Public Agency may add facilities to Exhibit A upon prior written notice to ABAG POWER and the submission of a "Customer Authorization for Core Gas Transportation Service" form (or Utility authorized equivalent) to the Utility. Public Agency may delete facilities from Exhibit A only upon written consent by ABAG POWER, which consent shall not be unreasonably withheld, except that Public Agency may delete facilities without ABAG POWER's consent if Public Agency abandons the facility or transfers the facility to another entity.

5. Agency Relationship: Public Agency authorizes ABAG POWER to act as its exclusive agent for the Program and does hereby constitute and appoint an authorized officer or agent of ABAG POWER to act on its behalf as its lawful agent for the implementation of the Program. This authorization shall include the right to do and perform all acts, with full power to execute all documents requisite and necessary to be done in all matters relating to the purchase, sale, and transportation of natural gas. Therefore, Public Agency authorizes ABAG POWER to take actions appropriate to establish and implement the Program, including, but not limited to:

5.1 Aggregating the gas supplies and services of Public Agency with those of other Participants in conjunction with providing such gas supplies and services to Public Agency and pursuant to the terms and conditions of the Program;

5.2 Executing local distribution company riders and other documentation on behalf of Public Agency;

5.3 Nominating gas supplies on behalf of Public Agency;

5.4 Handling gas imbalances, gas storage, and all other operational transactions with the Utility in order to deliver gas to the Utility for subsequent redelivery to Public Agency; and

5.5 Arranging for payment of Program bills for natural gas, transportation and other Utility charges. Public Agency understands and agrees that in the event of nonpayment by ABAG POWER, Public Agency will be responsible for payment of Public Agency's bills for gas and services, even if the Public Agency has already made payment to ABAG POWER for those gas quantities and services.

Public Agency understands that if ABAG POWER's contract with the Utility terminates for any reason, on Public Agency's receipt of notice from Utility, Public Agency will receive gas service for Exhibit A accounts under core procurement service from the Utility commencing on the first day of Public Agency's next billing cycle pursuant to the terms and conditions of the applicable core procurement Tariff Rate Schedule for each Public Agency's accounts for the remainder of the Contract Year.

6. Title: All purchase, transportation and other gas service contracts shall be in the name of ABAG POWER.

7. Term: Subject to the provisions of Paragraphs 12 and 13 hereof, and receipt of timely notifications of alternative arrangements, this Agreement shall be in full force for a three (3) year term commencing July 1, 1999. Subject to Paragraph 13, the term of this Agreement shall be automatically extended for additional three-year periods upon ABAG POWER's submission to Public Agency of written notice in conformity with Paragraph 11 and provided that ABAG POWER is not in breach of this Agreement, no later than May 1 of each year.

8. Fees: The operational fees for all services described in Paragraphs 3 and 5 shall be established by the ABAG POWER Board of Directors, hereinafter "Board".

9. Payment:

9.1 On a monthly basis, unless otherwise approved by Public Agency, ABAG POWER will provide, or cause to be provided, to Public Agency a consolidated invoice for the Public Agency's facilities serviced under this Agreement. Invoices will be directed to and payment is to be made directly by Public Agency to the escrow account designated pursuant to Paragraph 10 of this Agreement. Payment is due immediately upon receipt of the invoice. Late payment charges at the rate of one and a half percent (1.5%) per month calculated daily on the outstanding balance will be imposed commencing on the thirty-first (31st) day after the mailing date of the invoice. Late payment charges may, at ABAG POWER's sole discretion, be debited against Public Agency's Credit Account as defined in Paragraph 9.3.

9.2 ABAG POWER will invoice Public Agency, and Public Agency will pay, in monthly installments, sums representing payments in advance for the natural gas and services provided under

this Agreement (Invoiced Amounts). Initially, Invoiced Amounts will be based on ABAG POWER's estimate of Public Agency's consumption of natural gas for the month leveled to eliminate extreme consumption fluctuations but adjusted to reflect moderated seasonal fluctuations. Each invoice will also identify the costs, if any, of natural gas, transportation, utility charges, operational fees and administration fees charged to Public Agency for the period identified in the invoice (Actual Charges). Any disputes between the parties regarding the amount of any Actual Charges shall be resolved pursuant to Section H of Exhibit B to this Agreement and the Credit Account, as defined in Paragraph 9.3, will be adjusted as soon as practicable to reflect the resolution of the dispute.

9.3 For each invoice, ABAG POWER will calculate (a) the difference between the Invoiced Amount and the Actual Charges, and (b) the difference between the cumulative total of the Invoiced Amounts and the cumulative total of Actual Charges, adjusted pursuant to Paragraphs 9.1 and 9.2 (Credit Account). Public Agency recognizes that the Credit Account is a calculation of payments, credits, debits and charges made pursuant to this Agreement and that ABAG POWER will not be required to establish actual fund accounts on behalf of, or in the name of, Public Agency with monies.

9.4 In accordance with the terms of Paragraph 10, ABAG POWER will first apply the Invoiced Amounts to the payment of Actual Charges. Public Agency acknowledges that during the term of this Agreement ABAG POWER has the right to use monies in the amount reflected in the Credit Account to pay Actual Charges incurred by other Participants in the Program as such Actual Charges become due. Such use of the monies will not be a debit against the Credit Account and will not obviate, eliminate or modify ABAG POWER's obligation to pay Public Agency the Credit Account amount pursuant to Paragraph 13.3. ABAG POWER retains the right to modify Invoiced Amounts to increase the sum of Credit Accounts in the Program in order to timely pay Actual Charges as they become due.

9.5 The initial invoice will be dated \_\_\_\_\_ and must be paid by \_\_\_\_\_ (Start Date), or this Agreement terminates on \_\_\_\_\_. Upon prior written notice to Public Agency, ABAG POWER may delay the Start Date to accommodate Program requirements.

9.6 In the event Public Agency fails to make timely payment consistent with the terms employed by ABAG POWER, in addition to any other remedy it may have hereunder and notwithstanding the existence of any late payment penalty, ABAG POWER may declare Public Agency to be in default and terminate the agreement. ABAG POWER is further authorized to bill Public Agency for reasonable charges associated with demands for payment on late accounts as well as reasonable charges associated with suspension and resumption of service hereunder.

10. Disbursement of Funds: Subject to the terms and conditions of this Agreement, ABAG POWER agrees to provide for sale and delivery, and Public Agency agrees to receive and to pay ABAG POWER for natural gas. Further, Public Agency agrees to pay for the Actual Charges.

10.1 An escrow account for the purposes of receiving payments by Participants and making payments to the Utilities, the gas supplier and other payees as authorized by ABAG POWER will be established.

10.2 The instructions for this escrow account have been approved by ABAG POWER, and shall include a list of the authorized recipients of payments from the account.

10.3 Only ABAG POWER may authorize release of funds from the escrow account, and such shall only be to those payees identified in the escrow instructions.

11. Gas Program Pricing:

11.1 Allocation. The gas charges to Participants will include (a) cost of the gas commodity (gas charges), (b) applicable utility transportation charges, and (c) administrative costs. Gas charges are the product of a Participant's usage times the unit rate for gas for each month. The unit rate is the total monthly cost of natural gas purchased for all Participants at the supplier contract price divided by the total monthly usage of Participants. Transportation and administrative charges will be allocated to each Participant based on gas usage.

11.2 Annual Report. Each year, ABAG POWER will provide each Participant with a report showing that Participant's total costs for natural gas, transportation services and administrative fees at a per therm cost for each category.

11.3 Gas Purchasing. Under the policy direction of the Board, ABAG staff will regularly canvas the natural gas market and enter into contracts to acquire natural gas for, among others, fixed price, indexed price and variable price with a minimum and/or maximum. ABAG staff, under the policy direction of the Board, has the power to execute all contracts reasonably necessary to deliver natural gas to each Participant.

12. Change of Regulations: Any future change in law, rule or regulation, or utility practice which prohibits or frustrates ABAG POWER or the Public Agency from carrying out the terms of this Agreement shall excuse both parties from their obligations, other than the obligation of Public Agency to make payments due for gas and services received.

13. Cancellation of Service:

13.1 Cancellation by Public Agency: Public Agency may cancel the Agreement by giving ABAG POWER written notice by June 1 of its intent to terminate on June 30 of the final year of the three (3) year term.

13.2 Cancellation by ABAG POWER: Actions by the utilities and/or CPUC to develop rules which are in conflict with sound business practices, or impose unnecessary risk on either party to this Agreement, or substantially prevent ABAG POWER from performing its functions under this Agreement may result in the cancellation of this Agreement by ABAG POWER. ABAG POWER shall give Public Agency written notice ninety (90) days prior to such cancellation and both parties

shall work diligently to minimize the negative effects on ABAG POWER and the Public Agency of such cancellation.

13.3 Credit Account Payout: Within ninety (90) days after cancellation, ABAG POWER will pay to Public Agency the amount of its Credit Account as modified pursuant to Paragraph 9.2, less any debits imposed pursuant to Paragraph 9.1 and less any outstanding Actual Charges owed by Public Agency.

14. ABAG POWER Board of Directors: \_\_\_\_\_ (Name of Public Agency Representative) shall be the Public Agency's representative to the Board. The Board shall provide policy direction for the Program. The Board's powers shall include admission of new Participants and the extension of any contracts for the purchase of natural gas and/or related services under rules and procedures adopted by the Board.

15. Approvals: The Public Agency Representative may grant any approval, or give any direction required by this Agreement, in writing or orally. Written approvals or directions may be transmitted physically, by facsimile or electronically. Oral approvals will be confirmed in writing by either party.

16. Attorneys' Fees: In the event either party invokes its right to arbitration under Section H of Exhibit B due to an alleged breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as determined by the arbitrator.

17. Ownership of Files, Reports, Photographs, and Related Documents: Upon termination of the Agreement, any and all files, reports, photographs, plans, specifications, drawings, data, maps, models and related documents respecting in any way the subject matter of this Agreement, whether prepared by ABAG POWER, the Public Agency or third parties and in whatever media they are stored shall remain or shall become the property of the Public Agency and the Public Agency shall acquire title to, and copyright ownership of, all such documents. The Public Agency hereby grants to ABAG POWER an irrevocable license to retain a copy of all records covered by this paragraph for ABAG POWER's files.

18. Indemnity: Public Agency shall indemnify and hold harmless ABAG, ABAG POWER and their respective directors, officers, member agencies, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance or non-performance of the services required by this Agreement, unless such is caused by the negligence of ABAG, ABAG POWER or their respective directors, officers, member agencies, agents or employees.

19. Assignment/Security Arrangements: Public Agency hereby acknowledges that ABAG POWER may, in order to finance security deposit and cash flow deficits incurred in connection with the operation with this Program, incur short-term debt which may be secured by an assignment, encumbrance or hypothecation of this Agreement and/or payments due hereunder.

20. Notices: The following addresses for the giving of notices and billings shall be:

Public Agency Notices

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email: \_\_\_\_\_

Attn.: \_\_\_\_\_

Public Agency Billing Address

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Email: \_\_\_\_\_

Attn.: \_\_\_\_\_

ABAG POWER Notices

ABAG

P. O. Box 2050

Oakland, CA 94604-2050

Dave Finigan, Program Advisor

Telephone No: 510-464-7905

Facsimile No: 510-464-8468

Email: davef@abag.ca.gov

21. Severability: If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired, or invalidated.

22. Captions: The captions appearing in this Agreement are inserted as a matter of convenience and in no way define or limit the provisions of this Agreement.



23. Other Contract Provisions: This Agreement shall be subject to the other standard provisions which are set forth in the attached Exhibit B, which is incorporated by this reference.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands effective the date and year first above written.

**ABAG PUBLICLY OWNED ENERGY RESOURCES**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Eugene Y. Leong, President

Approved as to legal form and content:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kenneth K. Moy, Legal Counsel

**PUBLIC AGENCY**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_ (City Manager, County Administrator or other as designated by resolution)

Approved as to legal form and content:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### List of Facility Accounts

Name of Public Agency: \_\_\_\_\_

	PG&E Account Number	Street Address	City
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

**EXHIBIT B**  
**STANDARD CONTRACT PROVISIONS**

- A. **Time of Essence.** Time is of the essence in this Agreement.
- B. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.
- C. **Controlling Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- D. **Binding on Successors, Etc.** This Agreement shall be binding upon the successors, assigns, or transferees of ABAG POWER or Public Agency as the case may be. This provision shall not be construed as an authorization to assign, transfer, hypothecate, or pledge this Agreement other than as provided above.
- E. **Records/Audit.** ABAG POWER shall keep complete and accurate books and records of all financial aspects of its relationship with Public Agency in accordance with generally-accepted accounting principles. ABAG POWER shall permit authorized representatives of Public Agency and/or any of Public Agency's governmental grantors to inspect, copy, and audit all data and records of ABAG POWER relating to its performance of services under this Agreement. ABAG POWER shall maintain all such data and records intact for a period of three (3) years after the date that services are completed hereunder or this Agreement is otherwise terminated.
- F. **Prohibited Interest.** Neither ABAG, ABAG POWER or their respective directors, officers, employees or agents shall solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts.
- G. **Insurance Requirements.**
- (1) ABAG shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following insurance:
- (a) Workers' compensation insurance as required by law.
  - (b) Comprehensive general liability insurance coverage of One Million Dollars (\$1,000,000) in the aggregate for products and/or completed operations and One Million Dollars (\$1,000,000) per occurrence for automobiles.
  - (c) Professional liability insurance with minimum liability limits of Two Million Dollars (\$2,000,000) in the aggregate.
- (2) All ABAG's insurance policies shall contain an endorsement providing that written notice shall be given to Public Agency at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policy or policies, and all policies shall be carried by an insurance company or companies acceptable to Public Agency.

(3) In addition, each policy or policies of insurance described in subparagraph (2) above shall contain an endorsement providing for inclusion of Public Agency and its directors, officers, agents, and employees as additional insureds with respect to the work or operations in connection with this Agreement and providing that such insurance is primary insurance and that no insurance of Public Agency will be called upon to contribute to a loss.

(4) Promptly upon execution of this Agreement, ABAG shall deliver to Public Agency certificates of insurance evidencing the above insurance coverages. Such certificates shall make reference to all provisions or endorsements required herein and shall be signed on behalf of the insurer by an authorized representative thereof. ABAG agrees that at any time upon written request by Public Agency to make available copies of such policies certified by an authorized representative of the insured.

(5) The foregoing requirements as to types and limits of insurance coverage to be maintained by ABAG and approval of policies by Public Agency are not intended to, and shall not, in any manner limit or qualify the liabilities and obligations otherwise assumed by ABAG pursuant to this Agreement, including, but not limited to, liability assumed pursuant to ABAG's insurance policies under Subsections (1)(b) of this section.

(6) ABAG shall require all subcontractors to comply with the insurance requirements described in Section G(1)(a)-(c), inclusive.

H. **Arbitration.** Any dispute between ABAG POWER and the Public Agency regarding the interpretation, effects, alleged breach of powers and duties arising out of this Agreement shall be submitted to binding arbitration. The arbitrator shall be selected by agreement between the parties by lot from a list of up to six (6) arbitrators with each party submitting up to three (3) arbitrators.